

TITLE 18. BOARD OF EQUALIZATION

The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation) 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*. In 2002, the Board adopted Regulation 1533.2 to implement, interpret, and make specific the provisions of RTC section 6357.1, which provide a partial exemption from sales and use tax for sales and purchases of diesel fuel for use in farming activities or food processing. The proposed amendments will revise the definition for the term diesel fuel in Regulation 1533.2 so that the term is consistent with the definition for the term “diesel fuel” provided in the Diesel Fuel Tax Law (RTC § 60001 et seq.) that applies to diesel fuel transactions. The proposed amendments also add language to Regulation 1533.2, subdivision (b)(1), Example B, to provide a complete, grammatically correct sentence and to clarify which specific trips qualify for the partial exemption, remove the reference to the “general fund” in the note section of Appendix A to Regulation 1533.2, and make other non-substantive grammatical and formatting changes.

PUBLIC HEARING

The Board will conduct a meeting in Room 207 at 5901 Green Valley Circle, Culver City, California on February 24-26, 2015. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board’s Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on February 24, 25, or 26, 2015. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulation 1533.2.

AUTHORITY

RTC section 7051

REFERENCE

RTC section 6357.1,

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

RTC section 6357.1 provides a partial exemption from sales and use tax on the sale and purchase of diesel fuel for use in farming activities or food processing, but does not define the term “diesel fuel.” In 2002, the Board adopted Regulation 1533.2 to implement, interpret, and make specific the provisions of RTC section 6357.1. Regulation 1533.2 clarifies the conditions under which a sale or use of diesel fuel qualifies for the partial exemption provided by RTC section 6377.1. Also, as relevant here, Regulation 1533.2 provides a definition for the term diesel fuel solely for purposes of the partial exemption provided by RTC section 6357.1, which was based, in part, on the California Air Resources Board’s (ARB’s) definition of diesel fuel codified in California Code of Regulations, title 13, section (ARB Regulation) 2281, subdivision (b)(1), at the time the regulation was adopted. However, in 2004, the ARB amended its definition for the term diesel fuel, and the definition for diesel fuel in Regulation 1533.2 is no longer consistent with the ARB’s definition for diesel fuel in ARB Regulation 2281. In addition, the Diesel Fuel Tax Law (RTC § 60001 et seq.) also provides a definition for the term diesel fuel in RTC section 60022, which is applicable to diesel fuel transactions.

The exemption provided by RTC section 6357.1 is referred to as a partial exemption because section 6357.1, subdivision (c), provides that the exemption for diesel fuel used in farming activities and food processing does not apply to specified sales and use taxes included in the statewide sales and use tax rate. Also, Regulation 1533.2, subdivision (c), prescribes the content of the partial exemption certificate that purchasers are required to provide to retailers to claim the partial exemption provided by RTC section 6357.1. Subdivision (c) provides that any document satisfying the requirements may be used as an exemption certificate, and Appendix A to Regulation 1533.1 provides a partial exemption certificate form. And, as relevant here, the note section in Appendix A provides that the exemption provided by RTC section 6357.1 “is an exemption only from the state general fund portion of the sales and use tax rate” because that was the case when the Board adopted Regulation 1533.2. However, the partial exemption provided by RTC section 6357.1 now applies to state sales and use taxes that are not required to be deposited in the general fund, such as the sales and use tax imposed by section 36 of article XIII of the California Constitution that goes to the state’s Education Protection Account (as already provided in Regulation 1533.2, subdivision (a)).

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 1533.2

Due to the 2004 amendments to ARB Regulation 2281, subdivision (b), the definition of diesel fuel in Regulation 1533.2, which refers to the American Society for Testing and Materials Standard Specification for Diesel Fuel Oils (“ASTM”) D 975-81, is no longer consistent with the provisions of ARB Regulation 2281, subdivision (b)(1), which no longer refer to the “ASTM Standard Specification for Diesel Fuel Oils D975-81.” Therefore, Board staff considered whether it was necessary to amend the definition of

diesel fuel in Regulation 1533.2 due to the 2004 amendments to the definition of diesel fuel in ARB Regulation 2281. And, staff found that, for purposes of the administering the partial exemption provided by RTC section 6357.1, it would be more effective to amend the definition of diesel fuel in Regulation 1533.2 so that the definition will no longer be based upon the ARB definition, but instead will be based upon the definition of the term diesel fuel contained in section 60022 of the Diesel Fuel Tax Law. This is because staff determined that revising the definition of diesel fuel so that it is consistent in the sales and use tax regulations and the Diesel Fuel Tax Law will provide more clarity to taxpayers and staff.

Interested Parties Process

The Board's Business Taxes Committee (BTC) staff prepared draft amendments to subdivision (b)(6) of Regulation 1533.2 to revise the definition of diesel fuel to be consistent with the definition of diesel fuel in RTC section 60022. BTC staff subsequently prepared a discussion paper, and provided the discussion paper and its draft amendments to Regulation 1533.2 to the interested parties. On July 15, 2014, BTC staff conducted an interested parties meeting to discuss the draft amendments.

Since BTC staff did not receive any inquiries or written comments regarding its draft amendments during or subsequent to the July 15, 2014, interested parties meeting and staff had no changes to its recommendation to amend Regulation 1533.2, BTC staff did not prepare a second discussion paper and cancelled the second interested parties meeting that was previously scheduled to discuss staff's draft amendments. Staff also notified interested parties that comments could be submitted up to September 25, 2014, for consideration in the preparation of the Formal Issue Paper regarding the draft amendments. However, staff did not receive any other comments.

November 19, 2014 BTC Meeting

Subsequently, staff prepared Formal Issue Paper 14-009 and distributed it to the Board Members for consideration at the Board's November 19, 2014, BTC meeting. Formal Issue Paper 14-009 recommended that the Board approve and authorize publication of the amendments to Regulation 1533.2 (discussed above) in order to revise the definition of the term diesel fuel in Regulation 1533.2, subdivision (b)(6), so that the term has the same meaning as defined in section 60022 of the Diesel Fuel Tax Law. Formal Issue Paper 14-009 recommended that the Board add language to Regulation 1533.2, subdivision (b)(1), Example B, to provide a complete, grammatically correct sentence and to clarify which specific trips qualify for the partial exemption, and to remove the reference to the "general fund" in the note section of Appendix A to Regulation 1533.2. Formal Issue Paper 14-009 also recommended that the Board replace the capital "S" with a lower case "s" at the beginnings of the words "Section" throughout Appendix A to Regulation 1533.2 to make the words consistent with the references to "section" and "sections" in the body of the regulation and consistent with the citation format prescribed in the California Style Manual.

During the November 19, 2014, meeting, the Board Members unanimously voted to propose the amendments to Regulation 1533.2 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1533.2 are necessary to have the effect and accomplish the objective of making the definition for the term diesel fuel in Regulations 1533.2 consistent with the definition of the term diesel fuel in the Diesel Fuel Tax Law that applies to diesel fuel transactions.

The Board also anticipates that the proposed amendments to Regulation 1533.2 will reduce confusion, promote fairness, and benefit retailers, consumers, Board staff, and the Board by making the definition for the term diesel fuel in Regulation 1533.2 consistent with the definition for the term diesel fuel in the Diesel Fuel Tax Law that applies to diesel fuel transactions and clarifying that biodiesel is diesel fuel for purposes of the partial exemption from sales and use tax for diesel fuel used in farming activities or food processing.

The Board has performed an evaluation of whether the proposed amendments to Regulation 1533.2 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulation 1533.2 is the only state regulation providing a partial sales tax exemption for diesel fuel used in farming activities or food processing. The Board is aware that California Code of Regulations, title 18, section (Regulation) 1598.1, *Diesel Fuel Prepayment Exemption*, also defines the term “diesel fuel” and the Board is separately proposing to amend the definition for the term diesel fuel in Regulation 1598.1 so that it consistent with the current definition of the term diesel fuel in RTC section 60022 and the proposed amendments to the definition of the term diesel fuel in Regulation 1533.2. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1533.2 or the proposed amendments to Regulation 1533.2.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 1533.2 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT

The Board has determined that the adoption of the proposed amendments to Regulation 1533.2 will result in no direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the proposed amendments to Regulation 1533.2 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulation 1533.2 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the proposed amendments to Regulation 1533.2 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulation 1533.2 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 1533.2 will not affect the benefits of Regulation 1533.2 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Regulation 1533.2 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Kevin B. Smith, Tax Counsel III, by telephone at (916) 323-3152, by e-mail at Kevin.Smith@boe.ca.gov, or by mail at State Board of Equalization, Attn: Kevin B. Smith, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on February 24, 2015, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 1533.2 during the February 24-26, 2015, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulation 1533.2. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an underscored and strikeout version of the text of Regulation 1533.2 illustrating the express terms of the proposed amendments. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulation 1533.2, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulation 1533.2 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change

clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulation 1533.2, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.